

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CELESTINO GUILLERMO,

Petitioner,

vs.

TERRI MCDONALD, Warden,

Respondent.

No. C 11-6231 JSW (PR)

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED IN
FORMA PAUPERIS**

(Docket No. 3)

INTRODUCTION

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction. This order directs Respondent to show cause why the petition should not be granted, and grants Petitioner's application for leave to proceed in forma pauperis.

BACKGROUND

In 2010, Petitioner was convicted in San Mateo County Superior Court of several counts of "rape in concert" (Cal. Pen. Code § 264.1). The trial court sentenced him to a term of thirty-six years in state prison. In 2010, the California Court of Appeal affirmed and the California Supreme Court denied a petition for review. The instant petition was filed on December 13, 2011.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

II Legal Claims

Petitioner claims that: (1) race-based peremptory challenges to prospective jurors by the prosecutor deprived petitioner of his constitutional right to a jury composed of a fair cross-section of the community; and (2) there was insufficient evidence to support his conviction for rape in concert. Liberally construed, these claims are sufficient to warrant a response from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within **thirty (30)** days of the date the answer is filed.


1 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on
2 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
3 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
4 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
5 non-opposition within **thirty (30) days** of the date the motion is filed, and Respondent
6 shall file with the Court and serve on Petitioner a reply within **fifteen (15) days** of the date
7 any opposition is filed.

8 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
9 the Court informed of any change of address by filing a separate paper captioned "Notice
10 of Change of Address." He must comply with the Court's orders in a timely fashion.
11 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
12 to Federal Rule of Civil Procedure 41(b).

13 5. The application to proceed in forma pauperis (docket number 3) is
14 GRANTED.

15 IT IS SO ORDERED.

16 DATED: 02/03/2012

17 
18 JEFFREY S. WHITE
19 United States District Judge
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CELESTINO GUILLERMO,

Plaintiff,

v.

TERRI MCDONALD et al,

Defendant.

Case Number: CV11-06231 JSW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 3, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Celestino Guillermo
F96691
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127

Dated: February 3, 2012



Richard W. Wieking, Clerk
By: Tana Ingle, Deputy Clerk